(2010) 08 CHH CK 0027

In the Chhattisgarh High Court

Case No : Writ Petition No. 1286 of 2003

Sumit Agrawal APPELLANT

Vs

Raipur Municipal Corporation RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Chhattisgarh Municipal Corporation Act, 1956 — Section 132(6)(1), 427, 427(23), 432A

Constitution of India, 1950 — Article 14

Citation : AIR 2011 Chh 41

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Heard Shri B.P. Sharma, learned Counsel for the Petitioner and Shri Pankaj Agrawal, learned Counsel for the Respondent-corporation.

2. By this petition, the Petitioner challenges the notice inviting tender dated 13-3-2003 (Annexure P/l) issued by the Respondent-corporation and further, a direction to the Respondent-corporation to renew the agreement for further period as per the prevailing practice and in accordance with the bye-laws.

3. The indisputable facts, in brief, are that pursuant to the application dated 12-1-1996, the Petitioner was granted permission on 27-2-1996 (Annexure P/3) to install hoardings on payment of annual rent. The same was followed for a period from 1-3-1996 to 13-3-1997. It was clearly stated that the hoarding so installed may be removed within 24 hours on notice to the Petitioner. There was no clause for renewal of the period. Thereafter, further agreement was executed on 14-10-1999 (Annexure P/4) granting permission from 1-4-1999 to 31-3-2002. The Petitioner was further permitted to continue with the business of installation of hoardings upto 19-3-2003. On completion of the period, the Petitioner including other persons who were granted permission to install

hoardings were informed by public notice that they should remove the hoardings before 30-3-2003, thereafter, the same would be confiscated by the Corporation. By public notice dated 13-3-2003, on the same date, a notice inviting tender was issued from all eligible persons to make application with a security deposit of Rs. 20,000/- for agreement of permission to install hoardings for advertisement and further, a notice to remove the hoardings permitted upto 30-3-2003. Thus, this petition.

4. The sole contention of the Petitioner is that there is no provision for inviting tender for grant of permission to install hoardings for advertisement under bye-laws framed under the provisions of Section 427 read with Section 132(6)(1) of the Chhattisgarh Municipal Corporation Act, 1956 (for short ''the Act, 1956''). Thus, the action of removal of hoardings and further publication of notice inviting tender is bad in law.

5. There is no dispute that the Petitioner was granted permission upto. 30-3-2003 to install hoardings for advertisement on payment of rent. The Petitioner did not challenge the provisions of law. After the period of Petitioner for installation of hoardings for advertisement was over, a public notice was issued inviting tender from all eligible persons. The Petitioner seeks to question the legality and validity of the notice inviting tender.

6. Section 132(6)(1) of the Act, 1956 reads as under:

132. Taxes to be imposed under this Act.-- (1) For the purpose of the Act, the Corporation shall, subject to general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, the following taxes, namely:

xxx xxx xxx

(6) In addition to the taxes specified in Sub-section (1), the Corporation may, for the purpose of this Act, subject to any general or special order which the State Government may make in this behalf, impose any of the following taxes, namely:

xxx xxx xxx

(1) a tax on advertisement other than advertisements published in newspapers;

xxx xxx xxx

7. Section 132(6)(1) of the Act, 1956 enables the Respondent-corporation to impose a tax on advertisement, other than the advertisements published in newspapers. The hoardings are installed for the purpose of advertisement and the Respondent-corporation is fully competent to impose tax. So far as competence of the Respondent-corporation is concerned as regards there is no doubt that the Respondent-corporation has full jurisdiction to impose tax on advertisement. Now the question is whether the same can be done by permitting other persons.

8. In exercise of powers conferred by Section 432-A of the Act, 1956, the bye-laws under Sub-section (23) of Section 427 was framed. Bye-laws No. 6 provides for determination of payment after receipt of applications and selection thereon for grant of permission. The notice inviting applications though is not provided, it is the safest method to select the competent persons to ensure transparency in the selection of the competent persons. Bye-laws No. TO provides for cancellation of the order, if it does not comply with the terms and conditions of the permission. In the case on hand, the permission to install hoardings for advertisement came to an end as the period expired. Terms and conditions for grant of permission is also specified at Annexure P/1, filed by the Petitioner. There is no grievance that there is any violation of any terms and conditions in issuing notice inviting tender for grant of permission to install hoardings as period of permission, expired.

9. It is a trite law that an executive instruction can be issued when there are no statutory provisions on the subject. The executive instructions can also be issued to supplement the statutory provisions when those provisions are silent on the subject. (See: Indira Sawhney v. Union of India 1992 Supp (3) SCC 217.

10. In the case on hand, even if there was no bye-laws for giving effect to enable provisions of Section 132(6)(1) of the Act, 1956 by executive instructions, the purpose can be achieved and the levying of taxes on hoardings cannot be said to be unconstitutional or illegal. The notice inviting applications from all eligible persons is in accordance with the constitutional provisions of equality as enshrined under Article 14 of the Constitution of India.

11. Further, in State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, , the Supreme Court observed as under:

19 ...Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect....

12. For the reasons stated hereinabove, there is no irregularity or illegality in the alleged notice as well as the order directing the Petitioner to remove the hoardings installed by him.

13. In the result, the writ petition, being bereft of merit, is liable to be and is hereby dismissed.

14. There shall be no order as to costs.

